

## **ASSURANCES AND CERTIFICATIONS**

This Part of the RFP is a sample of the Board Contract Boilerplate; this, or similar language will be used in all Contracts awarded under this procurement. All responses to this RFP must include the statement of concurrence (Certification of Bidder), which states that the Bidder has read this section of the RFP and is prepared to sign a contract, should the proposal be selected for funding, which includes these assurances and certifications:

### **SECTION 1. Compliance with Law/Order of Precedence**

In rendering performances hereunder, the Contractor shall comply with the requirements of any laws and regulations of any specific source(s) for the Contract, including, but not limited to, the Texas Workforce Act; Texas Workforce Commission (TWC) rules and regulations; any revisions amendments to such rules and regulations; and Board Plans. Such compliance shall be accomplished in such a manner so as to prevent or to correct any breach of the Board's Contract with the State of Texas to operate workforce programs and services under the Act. In any event, the above laws and regulations shall supersede any conflicting or contradicting provisions of this Contract.

### **SECTION 2. Child Labor Laws**

Contractor shall comply with all applicable Child Labor Laws of the United States and the State of Texas.

### **SECTION 3. Health and Safety Standards at Work/Training Facility**

Contractor shall ensure compliance with applicable health and safety standards established under State and federal law, including the Occupational Safety and Health Act of 1970, or with other Regulations, regarding working conditions of employees of Contractor and of customers in programs funded by the Board under this Contract. Contractor shall provide written notification to the Board of any incident of on-site injury or medical assistance to the Contractor staff or customer, within the same day but no later twenty-four (24) hours of occurrence of such incident.

### **SECTION 4. Grievances and Complaints**

Contractor shall establish and maintain a complaint procedure in accordance with the regulations, and state or local policy to resolve all complaints arising under programs funded by this Contract. In this regard, the Contractor shall notify the Board in writing upon receipt of any such grievances or complaints filed and cooperate with the U.S. Department of Labor, TWC, and the Board in the resolution of any conflict, which may occur from the activities funded under this Contract.

### **SECTION 5. Equal Opportunity Compliance**

- A. Contractor assures and guarantees that it will comply fully with the nondiscrimination and equal opportunity provisions, including Title VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972, as amended; the Non-traditional Employment for Women Act of 1991, as amended; and applicable provisions of the Clean Air Act and the Federal Water Pollutions Control Act, as amended.
- B. Contractor covenants to make a good faith effort to ensure that the employees and personnel of the local workforce development system reflect the demographic composition of the local workforce development area, subject to the provisions of the contract.
- C. Contractor assures that it will not deny services under any grant to any person and are prohibited from discriminating against any employee, applicant for employment, or beneficiary because of race, color, religion, sex, national origin, age, physical or mental disability, temporary medical condition, political affiliation or belief, citizenship or his/her participation in any Workforce Investment Act Title I financially assisted program and/or activity, as defined under 29 CFR 37.

## **SECTION 6. Political Activities: Lobbying Prohibited**

### A. Political Activities Prohibited

Contractor shall not permit any program funds provided under this Contract to be in any way or to any extent utilized in the conduct of political activities in contravention of Chapter 15 or Chapter 73 of Title 5, United States Code. Prohibited activities under this section include but are not necessarily limited to the assignment of any customer by Contractor or an agent of Contractor to work for or on behalf of a partisan political activity; or to participate in other partisan political activities such as lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.

### B. Political Restrictions on Customers

Customers are not precluded from taking an active part in a political campaign outside of training hours, provided they do not identify themselves as spokesmen for any program funded under this Contract.

### C. Political Restrictions on Employees

Contractor shall prevent persons whose principal employment is involved with an activity funded in whole or in part by the Board Disbursements, during working hours paid by this Contract, from:

1. Being a candidate for public office;
2. Aiding the election or defeat of a candidate for public office;
3. Publicizing, lobbying, or propagandizing the support or opposition to legislation pending before a government body;
4. Impeding any person's right to vote, sign petitions, or speak or write on political subjects unrelated to specific political or legislative campaigns;
5. Soliciting funds or contributions for political purposes; or
6. Coercing, or attempting to coerce, persons in matters relating to any of the foregoing; or
7. Engaging in any political activity at any time as a representative of the Board, and/or its agents, TWC, or other Federal or State funding source(s).

The restrictions provided above shall not include the right of employees to vote, sign petitions, or speak or write on political subjects unrelated to a specific political campaign.

### D. Restrictions on Lobbying

No funds provided under this Contract may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators. Contractor will comply with the requirements of **Restrictions on Lobbying: Certification and Disclosure Requirements** imposed by 29 CFR 93, dated February 26, 1990, and clarified by Notice in the Federal Register, Vol. 55, No. 116, dated June 15, 1990.

## **SECTION 7. Non-Labor Involvement**

### A. Union Activities

1. No funds under the Act shall be used in any way to assist, promote, oppose, or deter union organizing.
2. No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional training involves individuals employed under a collective bargaining agreement which contains a union security provision.
3. Nothing in this section shall prevent an employer from checking off union dues or service fees pursuant to applicable collective bargaining agreements or State law.
4. An opportunity to comment on proposed training will be afforded to any labor organization representative as outlined in Section 143.C.2. of the Act.

### B. Labor Disputes Involving Work Stoppage

1. No customer may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. If such a work stoppage occurs during the grant period, job seekers in affected positions must: (1) be relocated to positions not affected by the dispute, (2) be suspended through administrative leave, and (3) where customers belong to the labor union involved in the work stoppage, be treated in the same manner as any other union member except such

members must not remain working in the affected position. Contractor shall make every effort to relocate customers who wish to remain working, into suitable positions unaffected by the work stoppage.

2. No person shall be referred to or placed in an on-the-job training position affected by a labor dispute involving a work stoppage and no payments may be made to employers for the training and employment of customers in on-the-job training during the periods of work stoppage.

#### **SECTION 8. Sectarian Involvement Prohibited**

- A. Contractor shall ensure that no funds under this Contract are used, either directly or indirectly in the support of any religious activity, worship, or instruction.
- B. No customer shall be engaged in the construction, operation or maintenance of that part of any facility, which is used or will be used for religious instruction or as a place of religious worship.
- C. Places of religious worship such as a church or a chapel shall not be used as work sites for customers.

#### **SECTION 9. Prevention of Fraud and Abuse**

- A. Contractor shall establish, maintain, and utilize internal program management procedures sufficient to provide for the proper and effective management of all activities funded under this Contract.
- B. Failure on the part of Contractor or a subcontractor of Contractor to comply with the provisions of this Contract, or with any applicable federal or state laws or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds and/or termination of this Contract.
- C. Contractor shall ensure diligence in managing programs under this Contract including the carrying out of appropriate monitoring activities and in taking immediate corrective action against known violations of any applicable laws and regulations.
- D. Contractor assures that it will perform the contracted activities in conformance with safeguards against fraud and abuse as set forth by the Board, the State of Texas, U. S. Department of Labor, any applicable laws and regulations. Contractor agrees to notify the Board of suspected fraud, abuse, or other criminal activity through filing a written incident report within twenty-four (24) hours of knowledge thereof. Theft or willful damage to property on loan to the Contractor shall be reported to local law enforcement agencies within two (2) hours of discovery of any such act.
- E. Contractor agrees to cooperate fully with the Board, local law enforcement agencies, the State of Texas, U.S. Office of the Inspector General, the Federal Bureau of Investigation, and any other duly authorized investigative unit in carrying out a full investigation of all such incidents.

#### **SECTION 10. Confidentiality of Records**

Contractor shall maintain the confidentiality of any information, regarding program customers and the immediate family of any customer, that identifies or may be used to identify them and which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Contractor shall not divulge such information without the written permission of the customer, except that such information which is necessary as determined by the Board for purposes related to the performance or evaluation of the Contract may be divulged to the Board or such other parties as they may designate having responsibilities under the Contract for monitoring or evaluating the services and performances under the Contract, to parties authorized by any specific funding sources under the Contract, or to governmental authorities to the extent necessary for the proper administration of the law. All release of information shall be in accordance with applicable State laws, and policies of the Board. No release of information by Contractor, if such release is required by Federal or State law, shall be construed as a breach of this section.

#### **SECTION 11. Nepotism**

Contractor will comply with Texas Civil Statutes, Article 5996a, if applicable, by ensuring that no officer, employee, or member of the Contractor's governing body shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person.

## **SECTION 12. Conflicts of Interests**

- A. Standards of Conduct for Public and Non-Profit Contractors -- By signature of this Contract, Contractor hereby covenants and affirms that in administering this Contract, it will comply with the standards of conduct, hereinafter specified, for maintaining the integrity of the project and avoiding any conflict of interest in its administration:
1. General Assurance - Every reasonable course of action will be taken by the Contractor in order to maintain the integrity of the expenditures of public funds and to avoid any favoritism or questionable or improper conduct. This Contract will be administered in an impartial manner, free from personal, financial, or political gain. Contractor, its executive staff and employees, in administering this Contract, will avoid situations which give rise to a suggestion that any decision was influenced by prejudice, bias, special interest, or personal gain. No member of the Board shall cast a vote on the provision of services by that member (or any organization which that member represents, or their affiliate) or vote on any matter which would provide direct financial benefit to that member or any business or organization which the member directly represents.
  2. Conducting Business Involving Relatives - No relative by blood, adoption, or marriage or any executive or employee of the Contractor shall receive favorable treatment for enrollment into services provided by, or employment with, the Contractor. Contractor shall also avoid entering into any Contracts for services with a relative by blood, adoption, or marriage. When it is in the public interest for the Contractor to conduct business (only for the purpose of services to be provided) with a relative, the Contractor shall obtain approval from the Board before entering into an agreement. All correspondence shall be kept on file and available for monitoring and audit reviews.
  3. Conducting Business Involving Close Personal Friends and Associates - Executives and employees of the Contractor will be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering the Contract, will exercise due diligence to avoid situations which may give rise to an assertion that favorable treatment is being granted to friends and associates. When it is in the public interest for the Contractor to conduct business with a friend or associate of an executive or employee of the Contractor, a permanent record of the transaction will be retained.
  4. Avoidance of Conflict of Economic Interest - An executive, officer, agent, representative, or employee of the Contractor will not solicit or accept money or any other consideration from a third person or entity for the performance of an act reimbursed in whole or in part by the Contractor. Supplies, materials, equipment, or services purchased with Contract funds will be used solely for purposes allowed under the Contract.
  5. No officer, manager, or paid consultant of Contractor is, or is married to, a Director of the Board or a manager of the Board.
  6. No Director of the Board or manager of the Board directly owns, controls, or has any interest in Contractor.
  7. No Director of the Board or employee of the Board receives compensation from Contractor for lobbying activities as defined in Chapter 305 of the Texas Government code.
  8. Contractor has disclosed on the face of this contract any interest, fact or circumstance, which does or may present a potential conflict of interest.
  9. Should Contractor fail to abide by the foregoing covenants and affirmations regarding conflict of interest, Contractor shall not be entitled to the recovery of any costs or expenses incurred in relation to this Contract and shall immediately refund to the Board any fees or expenses that may have been paid under this Contract and shall further be liable for any other costs incurred or damages sustained by the Board relating to this Contract.
  10. Contractor shall be in accordance with Texas Administrative Code, Title 40, Part 20, Chapter 802.

- B. Standards of Conduct for Private-for-Profit Contractors  
For-Profit Contractors shall submit to the Board their Standards of Conduct addressing each of the areas specified herein above. These Standards shall be submitted upon execution of this Contract, unless previously submitted, and shall be subject to Board approval.

**SECTION 13. Notices/Communication**

- A. Any notice, request or demand required or permitted to be given hereunder by either party to the other shall be affected either by personal delivery in writing or by U.S. mail, courier service, or telecopier with applicable verification of date and time initiated, and delivered to the last registered address of either party and such notice will be deemed to be legally effective irrespective of any change in location of Contractor.
- B. Mailed notices shall be addressed to the parties at the addresses indicated in the Contract, but each party may change its address by written notice in accordance with this section. Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of three (3) days after mailing or verified receipt whichever is earlier.

**SECTION 14. Charging of Fees**

Contractor shall not:

- A. Charge a fee to an individual for the placement or referral of such individual in or to a program funded by the Board under this Contract or to employment; or
- B. Use Board Disbursements for the payment of a fee charged to an individual for the placement or referral of that individual in or to a program funded by the Board or to employment.

**SECTION 15. Program Participation**

- A. Contractor agrees that participation in programs and activities financially assisted under the terms of the Act shall be open to established residents who are citizens and nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the Attorney General to work in the United States.
- B. Contractor agrees that services provided under this Contract are to be provided to eligible persons as defined by Federal and State Rules and Regulations, the TWC, and other funding sources for this Contract and the Board plans for workforce services to customers.

**SECTION 16. Use of Funds/Maintenance of Effort**

- A. Contractor assures and guarantees that it shall not operate a program in such a manner that it would result in total or partial displacement of employed workers by customers employed under the Act, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits.
- B. Contractor assures and guarantees that it shall not operate a program in such a manner as to impair (1) existing contracts for services, or (2) existing collective bargaining contracts, unless the employer and the labor organization concur in writing with respect to any elements of the proposed activities which affect such a collective bargaining agreement, or either such party fails to respond to written notification requesting its concurrence with thirty (30) days of receipt thereof.
- C. Contractor assures and guarantees that it shall not place or retain a customer in a position (1) when any person is on layoff from the same or any substantially equivalent job, or (2) when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a customer whose wages are subsidized under the Act and or other applicable laws and regulations. Furthermore, no jobs shall be created for customers in a promotional line that shall infringe in any way upon the promotional opportunities of currently employed individuals.
- D. Contractor agrees that Board funds under this Contract are to be used only for activities which are in addition to those which would otherwise be available in the Board service area in the absence of such funds.

#### **SECTION 17. Responsible Contractor**

- A. Contractor guarantees that it is responsible and possesses the ability to perform successfully under the terms and conditions of this Contract, that it has adequate financial and technical resources or the ability to obtain such resources as required during the performance of this Contract and that it has the administrative capability and competence necessary to carry out the terms and conditions of this Contract exactly as specified. Additionally, the Contractor assures the Board that its performance under the terms and conditions of this Contract will be in accordance with highest integrity and business ethics. If the Board determines at its sole discretion that the Contractor is not responsible, that it does not possess the administrative, financial, and technical resources and capabilities necessary to successfully perform under the terms and conditions of this Contract, it shall terminate this Contract.
- B. The Board, in its sole discretion, may deem the Contractor a "high risk" if there is serious question or issue regarding the Contractor's administrative, financial or technical capability in meeting the terms and conditions of this Contract. This may occur if the Contractor: (1) has a history of unsatisfactory performance, or (2) is not financially stable, or (3) has a management system which does not meet management standards as determined by the Board, or (4) has not conformed to terms and conditions of previous awards, or (5) is otherwise not responsible as determined by the Board. In such event, the Board may establish and impose upon Contractor any special conditions and/or restrictions, it deems in its sole discretion, appropriate and necessary for the duration of the Contract period or until such time as the "high risk" status is removed by the Board.

#### **SECTION 18. Minimum Wages for Customers**

- A. In all instances when wages are paid to a customer enrolled in programs funded under this Contract, and in all instances when a job-ready customer is placed by the Contractor in unsubsidized employment, the Contractor shall ensure that the customer is compensated at a rate, including periodic increases, which is no less than the highest of the following standards:
  - 1. The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended; or
  - 2. The state or local minimum wage for the most nearly comparable covered employment; or
  - 3. The prevailing rates of pay for persons employed in similar occupations and skill level by the same employer; or
  - 4. The minimum entrance rate for inexperienced workers in the same occupation in the establishment; or if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area; or any minimum rate required by an applicable collective bargaining agreement.
- B. Contractor shall not place a customer in training, or in subsidized employment, for an occupation or skill for which practitioners of that occupation or skill normally are compensated at a rate less than the minimum wage specified in Section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended.

#### **SECTION 19. Federal/State Obligations**

It is expressly understood and agreed that neither the U.S. DOL, nor the TWC, are parties to this Contract and no legal liability shall attach to the part of the U.S. DOL or the TWC by the expressed or implied terms and conditions of this Contract.

#### **SECTION 20. Accessibility of Records**

- A. Contractor shall give the U. S. DOL, the Comptroller General, the General Accounting Office, the Auditor of the State of Texas, the TWC, and the Board through their authorized representative, the access to and the right to examine all records, books, papers or documents requested.
- B. Contractor agrees to cooperate with any monitoring inspection, audit, or investigation of activities related to this Contract as may be conducted by the Board, the TWC, the State, the U.S. DOL, the Comptroller General of the United States, or their duly authorized representative. Contractor agrees to make available for examination any and all records requested and shall permit such entities to audit, examine, and make excerpts

and transcripts, in whole or in part, from such records and to conduct audits of all contracts, invoices, materials, records of personnel, conditions of employment, and all other data requested.

- C. Such access shall be granted during regular office hours of the contractor with or without previous announcement and shall include provisions by the Contractor of suitable work space for such monitoring, inspection, audit, or investigation to be conducted.

#### **SECTION 21. Drug-Free Workplace Rule**

Contractor assures and guarantees that it shall comply with the Federal Drug Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991, as follows:

- A. Contractor shall publish a statement notifying employees and customers that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace/training site and specifying the consequences of any such employee violation.
- B. Contractor shall establish a drug-free awareness program to inform employees and customers of the dangers of drug abuse in the workplace, Contractor's policy of maintaining a drug-free workplace/training site, availability of counseling, rehabilitation, and employee assistance programs, and penalties which may be imposed for drug abuse violation.
- C. Contractor shall give a copy of the policy statement to each of Contractor's employees and customers engaged in the performance of activities under this Contract.
- D. Contractor shall notify the employees and customers in such statement that as a condition for employment or participation in training under this Contract, the employee and or customer will abide by the terms of the statement and notify, in writing, Contractor of any conviction or violation of a criminal drug statute in the workplace/training site no later than five (5) calendar days after the conviction.
- E. Contractor agrees to take disciplinary action against any employee or customer convicted for violation of any criminal drug statute in the workplace/training site or require participation in a drug abuse assistance or rehabilitation program in the case of an employee only.
- F. Contractor further assures that it will notify the Board; in writing, within five (5) calendar days, of any criminal drug statute violation by a Contractor employee or customer.

#### **SECTION 22. Economic Development and Relocation Activities**

No funds received under this Contract may be used for the following activities prohibited in Section 141, (c) and Section 141 (q) of the Act:

- A. Encouragement or inducement of the relocation of an establishment or part thereof, that results in a loss of employment for any employee of such establishment at the original location.
- B. Customized or skill training, on-the-job training, or company specific assessment of job applicants or employees, for any establishment or part thereof, that has relocated, until 120 days after the date on which such establishment commences operations at the new location, if the relocation results in a loss of employment for any employee at the original location.
- C. Employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers and similar activities, and for foreign travel.

#### **SECTION 23. The Rehabilitation Act/The Americans with Disabilities Act**

Contractor assures and guarantees that it shall comply with the Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794; and the Americans with Disabilities Act (PL101-336) of 1990, with Equal Employment Opportunity Commission rules 29 CFR Parts 1602, 1627, and 1630, dated July 26, 1991, and with any subsequent rules and regulations issued under this Act.

**SECTION 24. Integrity of the Texas Workforce System**

Contractors shall be in accordance with **Texas Administrative Code, Title 40, Part 20, Chapter 802** by: maintain fiscal integrity; maintaining appropriate insurance requirements; comply with all federal, state statutes and regulations regarding conflict of interest; refrain from using nonpublic information gained through a relationship with the Commission, TWC employee, Board or Board employee to seek or obtain financial gains that would result in a conflict of interest or appearance of a conflict of interest; promptly disclose in writing any conflict of interest; not employ/compensate a former board employee who was in a decision making position and was employed or compensated by the Board anytime during the last twelve (12) months.

**SECTION 25. Use of Funds/Buy American Act**

In spending funds under this Contract, Contractor agrees to comply with the Buy American.